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8/31/01

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

ARLENE TRIMBLETT and WILLIAM : CIVIL ACTION  
TRIMBLETT :

Plaintiffs :

v. :

KMART a/k/a BIG KMART and :  
METROPOLITAN LIFE INSURANCE :  
COMPANY :

Defendants :

3 : CV 01-1661

FILED  
HARRISBURG

AUG 30 2001

METROPOLITAN LIFE INSURANCE COMPANY, CLERK  
FOR THE COURT

**NOTICE OF REMOVAL**

Defendant Metropolitan Life Insurance Company ("MetLife" or

"Defendant") files this Notice of Removal pursuant to 28 U.S.C. §1441 based on  
the District Court's jurisdiction under 28 U.S.C. §1331, and states:

1. MetLife exercises its right under 28 U.S.C. §1441 to remove  
this civil action from the Court of Common Pleas of Luzerne County,  
Pennsylvania, in which this action is now pending, under the name of Arlene  
Trimblett and William Trimblett v. KMart a/k/a Big KMart and Metropolitan Life  
Insurance Company, Court of Common Pleas of Luzerne County, Pennsylvania,  
No. 5021-C-2001, to the United States District Court for the Middle District of  
Pennsylvania. Removal is proper because, as outlined below, the claims brought  
against MetLife in this case are governed by the Employee Retirement Income  
Security Act of 1974, 29 U.S.C. §1001-1461 ("ERISA").

2. Pursuant to 28 U.S.C. §1446, MetLife has attached as Exhibit A to this Notice of Removal the Complaint filed in state court in this case.

3. On July 30, 2001, Plaintiffs filed their Complaint in this action.

4. Plaintiff Arlene Trimblett ("Mrs. Trimblett"), alleges that she is entitled to disability benefits under a disability plan established and maintained by her employer, Defendant KMart a/k/a Big KMart ("KMart"), and funded by a policy obtained from MetLife (the "Plan"). [Complaint, ¶¶ 2, 4-11, 14; a copy of pages 12-13 of the short-term disability plan are attached as Exhibit B]. Mrs. Trimblett claims that she became disabled after suffering two heart attacks, first on September 29, 1994 and again on March 25, 1999, and was allegedly unable to continue working. [Complaint, ¶6]. She further claims that because of her alleged disability, she is entitled to benefits under the Plan. [Complaint, ¶¶6-11]. The benefits Mrs. Trimblett seeks to recover are provided pursuant to an employee welfare benefit plan as defined by ERISA §3(1), 29 U.S.C. §1002(1), and her only remedy for the recovery of benefits is provided pursuant to ERISA §502, 29 U.S.C. §1132.

5. The Court therefore has jurisdiction over this action because Plaintiffs' claims arise under ERISA and any state law claims Plaintiffs might assert are subject to complete preemption under ERISA. Metropolitan Life Ins. Co., v. Taylor, 481 U.S. 58 (1987); Pilot Life Ins.Co. v. Dedeaux, 481 U.S. 41 (1987). A cause of action filed in state court which is preempted by ERISA and

comes within the scope of Section 502(a)(1) is removable to federal court under 28 U.S.C. § 1441 as an action arising under federal law, even when the ERISA-related nature of the action does not appear on the complaint's face. Metropolitan Life Ins.Co. v. Taylor, 481 U.S. at 66.

6. This Notice of Removal has been filed in less than thirty days from the date of MetLife's receipt of the Complaint, which was the initial pleading setting forth the basis for the Court's jurisdiction.

7. Written notice of the filing of this Notice of Removal has been served on Plaintiffs' counsel, and a true and correct copy of this Notice of Removal will be filed with the Prothonotary of the Court of Common Pleas of Luzerne County, Pennsylvania.

8. Counsel for KMart has given her concurrence in this notice of removal and will file a separate consent form with the Court.

WHEREFORE, Metropolitan Life Insurance Company respectfully requests that this action be removed to this Court.

STEVENS & LEE

By 

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